



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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August 2, 2024

By ECF

The Honorable Jennifer H. Rearden
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Burton v. United States*, Case No. 18 CV 2039 (JHR) (SA)

Dear Judge Rearden:

This Office represents defendant the United States, sued under the Federal Tort Claims Act, and defendants Anthony Bussanich, Robert Beaudouin, Ysmael Joaquin, Kimberly Shivers, Lorenzo Barazza, Gerald Castillo, Wilson Silva, Quentin Holzendorf, Terrence Thomas, Rosalind Silvia, and Shaadiq Shakir, all current or former employees of the Bureau of Prisons ("BOP"), sued in their individual capacity under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). The case arises from the death of Franklin Sanchez, a Colombian national extradited to the United States on criminal charges who died while in custody at the MCC. As directed, Dkt. No. 137, on behalf of all parties, we write to provide the following status update on discovery that has occurred since June 21.

With the Government's assistance, on June 27, Plaintiffs conducted a virtual deposition of Alexandro Suero, an inmate in BOP custody; and, on July 11, a virtual deposition of Tyrell Whitaker, a parolee residing in a half-way house. Plaintiffs have attempted – thus far without success – to effect service of a deposition subpoena on Luis Figueroa, a former inmate who has completed his sentence. In addition, two Rule 30(b)(6) witnesses have been deposed: the first, concerning BOP document and retention policies, on July 18; the second, concerning BOP policies on the investigation of Special Investigation Supervisors, post order instructions, and documentation of inmate supervision, on July 23. A third deposition, concerning medication administration, sick call requests, and inmate access to medication, is scheduled for August 8. Also, on July 22, Plaintiffs submitted a motion requesting that the Court issue a letter of request under the Hague Convention to obtain discovery from a witness in Mexico, which Judge Aaron granted on July 25. Finally, Plaintiffs have raised two discovery disputes by letter motion to Magistrate Judge Aaron. The first, concerning the Government's production of witnesses to testify pursuant to Federal Rule of Civil Procedure 30(b)(6), was resolved and the motion denied as moot. Dkt. No. 151. The second dispute, concerning the BOP's identification of witnesses responsible for complying with the obligation to preserve potentially relevant evidence, Dkt. No. 154, is pending, with Defendants' response due on Monday, August 5.

Finally, the parties provide their respective positions concerning Plaintiffs' request for an extension of the discovery deadline. Plaintiffs' position: Plaintiffs respectfully reiterate their request outlined in their most recent pre-motion conference letter regarding the need for a discovery extension due to the Defendants' recent disclosure of the Litigation Hold. Given that Defendants have not responded to our requests to confer on this issue, we cannot propose any timeline for this extension and request the Court's assistance in resolving this issue as set forth in Plaintiff's letter.

The Government's position: the issue concerns the roster at MCC from March 2015. Since last week, the BOP has been working to identify which BOP employees were responsible for implementing the litigation hold as it pertains to video footage. This has required the BOP to reconstruct the MCC duty roster from March 2015 and interview current and former BOP staff. After completing this work today, we disclosed these four individuals to Plaintiffs and have offered to meet and confer early next week about what additional information Plaintiffs will be seeking.

Respectfully,

DAMIAN WILLIAMS
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cc: Plaintiffs' Counsel (by ECF)